

REMARKS

Applicant respectfully requests entry of the above indicated corrective amendment to the specification, which the applicant submits add no new matter to the application as filed. The amendment simply re-presents the Preliminary Amendment first submitted on November 6, 2004, and to which the accompanying Petition under 37 C.F.R. § 1.78 relates, to remove an improper post-filing incorporation by reference. Applicant submits that the amendment is proper in all other respects.

Applicant further submits that recognizing the claim to the Benefit of Priority is proper inasmuch as the instant application and application 10/188,564 were co-pending before 10/188,564 issued as U.S. Patent No. 6,800,062. Further, the corrected Preliminary Amendment is submitted concurrently with a petition under 37 C.F.R. § 1.78 to accept an unintentionally delayed claim for the benefit of a prior-filed non-provisional application under 35 U.S.C. § 120, with the requisite fee under 37 C.F.R. § 1.17(t), and with a statement that the entire delay between the date the claim was due under 37 C.F.R. § 1.78(a)(2) (March 17, 2004) and the date the claim was filed (November 6, 2004) was unintentional, to perfect the intended claim for benefit of priority under 35 U.S.C. § 120.

As noted in the attached Petition, 37 C.F.R. § 1.78 states that:

A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed application must be accompanied by:

(i) The reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section to the prior-filed application, *unless previously submitted*, (italics provided).

Applicant's previously submitted (November 6, 2004) Preliminary Amendment included the reference to application 10/188,564 as required by 35 U.S.C. 120 and paragraph (a)(2) of this section. That Preliminary Amendment is correctively amended herein, but the required reference remains unchanged relative to the November 6, 2004 Preliminary Amendment.

Accordingly, applicant requests entry of the above amendments, and recordation of the indicated application continuity data consistent with the claim to benefit of priority now properly presented in the application. The Examiner is encouraged to telephone the undersigned at (503) 226-1191 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,

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I hereby certify that this correspondence is being transmitted to the U.S. Patent and Trademark Office via facsimile number (571) 273-8300 on June 2, 2010.

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